

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2200 OF 1991

Yadu Dagadu Amrale
(Since deceased by his
legal heirs and legal
representatives)

1. Anand Narayan Amrale,
2. Smt. Yamuna Shivaji Vaval,
3. Smt. Rukmini Vithal
Chandanshive,
4. Smt. Chandrabhaga Narayan
Amrale,
5. Pandurang Narayan Amrale,
6. Smt. Tai Sitaram Kasurde

All resident of Kanheri,
Tal. Khandala, Dist. Satara. ...Petitioners

Versus

Shriram Samarth Wasudev Swami
Math, Kanheri,
Public Trust No. NSA/911
Through Shri. Vasudeo Atmaram
Gosavi, Trustee,
Resident of Khandala,
Tq. Khandala, Dist. Satara ...Respondent.

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Mr. V.A. Thorat, counsel for Petitioners

Ms. Aniketa Aher-Sawant h/f A.V. Anturkar, counsel
for Respondent.

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CORAM: B. H. MARLAPALLE, J.
DATED: 26TH APRIL, 2005

JUDGMENT:-

1. Being aggrieved by the order passed by the
Assistant Collector, Phaltan Sub Division, Phaltan on

27.12.1989, in case No. TNC/Appln/88B/1/87, this petition under Article 227 of the Constitution has been filed by the cultivator who claims to be a protected tenant over the suit land. By the impugned order, the Assistant Collector directed the issuance of exemption certificate under Section 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter referred to as "the Act" for the sake of brevity).

2. The suit land admeasures three hector and 10 Ares from Gut No. 601 (old survey No. 169/5 and 166/1) Gut No.605 (old Gut No.166/5) of village Kanheri, Tq. Khandala, Dist. Satara. The petitioner claims to be a lawful tenant of the said land and under the provisions of the Act. As per him, one Abaji Balwant Gosavi, the original landlord and owner of the suit land had created tenancy in favour of the petitioner prior to 1948 and since then the petitioner remains in continuous possession of the suit land as an agricultural tenant of crop share for its value basis. By registered sale deed dated 23.12.1940 Abaji Gosavi sold the suit land to one Baburao Keshavrao Inamdar and the said sale deed was mutated in the records of rights under certified mutation entry No.628 dated 22.2.1949. The name of the petitioner was entered as a protected tenant under Section 3A of the Bombay Tenancy and Agricultural

Lands Act, 1939. The petitioner continued to pay half share of the crop to the new owner i.e. Mr. Baburao Inamdar and rent receipts were also issued accordingly.

3. Shriram Samarth Wasudev Swami Math i.e. the present respondent, had applied for registration as a Trust under Section 18 of the Bombay Public Trust Act, 1950 on 24.9.1952 and the Trust was registered in the year 1953. However, in the schedule to the Trust registration application, the suit land was not shown as its property and the registration certificate issued also did not show the suit land as the property of the Trust. Pursuant to the Inam Abolition Act, the suit land was restored in the name of the Government and was re-granted in the year 1955 in favour of the present respondent.

4. The petitioner had initiated proceedings under Section 32-G of the said Act for purchase of the suit land but the said proceeding came to be dropped as the landlord suffered disabilities/handicaps, on 29.9.1965. This was perhaps on the basis that Mr. Inamdar was the landlord and not the present respondent Trust. On 10.12.1972 the names of heirs and legal representatives of deceased Baburao Inamdar came to be entered in the record of rights of the suit lands and the petitioner continued to pay rents

to them. During this period from 1955 to 1972, the name of the respondent Trust was not shown in the records as the owner of the suit land. For the first time in the year 1980 an application was made by the respondent under Section 22-A of the Bombay Public Trust Act to the Assistant Charity Commissioner, Kolhapur for inclusion and registration of the suit land as a Trust property on the ground that through oversight the suit land were not included in the original application dated 22.4.1952 in the list of properties of the Trust. This application was contested by the petitioner and he being in possession on 1.4.1957 i.e. the tillers date, he had become a deemed purchaser under the said Act. By his judgment and order dated 10.11.1981 the Assistant Charity Commissioner in Enquiry No. 160 of 1980 allowed the application of the respondent and has entered the suit land as Trust property in Schedule-I of the respondent Trust. Revision application Nos. 3 and 4 of 1984 under Section 2 of the Bombay Public Trust Act, 1950 preferred by the petitioner before the Charity Commissioner challenging the order dated 10.11.1981 was filed. In the meanwhile the Trust filed R.C.S. No. 17 of 1983 in the Court of the learned Civil Judge Junior Division, Khandala for possession of the suit land. An application was made by the petitioner to frame the issue of tenancy and refer the same to the tenancy Court under Section

85-A of the Act in the said suit. However, the said application was rejected on 27.4.1987 and this order came to be challenged in writ petition No. 3418 of 1987 which was allowed by this Court on 19.10.1988. The Court below was directed to frame the issue and refer it to the tenancy Court. While the suit was pending, the respondent filed an application under Section 88-B of the Act on 3.3.1987 before the Assistant Collector, Phaltan Division, Phaltan for issuance of exemption certificate and that is how the impugned order has been passed. It is also pertinent to note at this stage that in R.C.S. No. 17 of 1983, an order was passed below application at Exh.81 on 21.12.1994 and the same was challenged in writ petition No. 913 of 1995. The petition was disposed of by this Court on 12.9.1997. It would be appropriate to re-produce the said order passed in writ petition No. 913 of 1995 which is as under:-

"The petitioner herein accepts Yadu W. Amrale as a tenant of the petitioner. In view of this the dispute in R.C.S. No. 17 of 1983 filed by the petitioner comes to an end. However, the learned counsel for the petitioner points out that the petitioner has subsequently obtained certificate under Section 28-B(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, he want to file fresh suit or the proceedings on

that basis. Clearly there is a fresh cause of action and the petitioner can file the suit. In view of this, this petition does not survive. The petition disposed of."

5. The Assistant Collector, on perusal of record, noted that the petitioner had not applied to the Tahsildar under Section 70(b) of the said Act though the Trust was registered before the 1st April, 1957. On 10.11.1981, the Assistant Charity Commissioner, Kolhapur region had held that the suit property belonged to Shriram Samarth Wasudev Swami Math and the opponent is also party in the said appeal. The Assistant Charity Commissioner, hence, held that the suit property was clearly held by the Math only. If the applicant has any grievance about his tenancy he should have approached the Tahsildar under Section 70(b) of the Act. These reasonings given by the Assistant Collector have been criticised by the learned counsel for the petitioner. It is submitted that the status of the petitioner as a tenant was not in dispute and his failure to apply under Section 70(b) of the Act would not change the same as on the tillers day i.e. on 1.4.1957 the petitioner was cultivating the suit land and it was not the property of the respondent Trust. Its inclusion as a property of the Trust has taken place on 10.11.1981 pursuant to the order passed in Enquiry No. 160 of 1980. By

placing reliance on the decision of this Court (Division Bench) in the case of **Chhatrapati Charitable Devasthan Trust Vs. Parisa Appa Bhoske and Ors. (1979 Mh.L.J. 163)**, it was submitted that the suit property could not be included as the property of the Trust registered in 1953, more so because the right of the tenant to become the owner on the tillers day could not be affected. In Bhoske's case, the Trust had applied for registration on 18.1.1956 and the registration order was passed in July, 1960, the Trust had applied under Section 88-B(1)(b) of the Act for exemption certificate. It was alleged that the Trust was not entitled to apply for exemption for the reason that as on 1.4.1957 the tenant had become the owner of the land and he therefore, could not be divested of that right. The inclusion of the property as Trust property could not have effected the existing tenant's vested right to be the purchaser/owner. This decision squarely applies to the case at hand.

6. Secondly, when the respondent had filed Writ Petition No. 913 of 1995 and accepted the status of the present petitioner as a tenant as is clear from the order re-produced hereinabove, the challenge to the petitioner's status as a tenant did not survive any further and the findings rendered against the petitioner before that order was passed by any other

subordinate authorities/Courts would be null and void. Once the status of the petitioner as a tenant is recognised, his right as the purchaser could not be disturbed. Section 3A was added by Bombay (XXVI) 1946 in the scheme of Bombay Tenancy Act, 1939 and which reads as under;-

"Every tenant shall, on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has within the said period made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the tenant is not a protected tenant.

Explanation (1) - A person shall not be deemed to be a tenant under this section if such person has been on an application made by the owner of the land as provided under section 2-A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant."

. Section 4A of the Act defines the term of "protected tenant" in the following words:-

" For the purpose of this Act, a person shall be recognized to be a protected tenant, if such person has been deemed to be a protected tenant under Section 3, 3A and 4 of the Bombay Tenancy Act, 1939 referred to in Schedule I to the Act".

7. Thus, it is clear that the reasoning given by the Assistant Collector in directing to issue exemption certificate under Section 88-B of the Act is unsustainable and in any case Section 88-B requirements ought to have been examined by the Assistant Collector in the impugned order. Clause b of sub-Section 1 of Section 88-B sets out certain preconditions for being eligible to obtain the exemption certificate. The lands which are the property of the Trust for an educational purpose, hospital, Panjarpol, Goshala or an institute of public religious worships and the entire income of such lands is appropriated for the purposes of such Trust. None of these parameters have been examined by the Assistant Collector and the impugned order is totally silent in that regard. This is an additional ground on which the impugned order is indefensible.

8. In the premises this petition succeeds and the

same is hereby allowed and the impugned order is quashed and set aside and the exemption certificate if it has been issued pursuant to the order, also stands declared as a nullity.

9. Rule made absolute accordingly with no order as to costs.
